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DULIN v. LILLARD, SHERIFF.—On a writ of *habeas corpus*. *Buchanan, J.*

This case involves the construction of an Act of the General Assembly, approved February 12, 1894 (Acts 1893-'4, page 270), amending section 4016 of the Code, and repealing so much of that section as conferred jurisdiction upon Circuit Courts to try certain criminal cases remanded to them by the County Courts. The prisoner had been indicted in the County Court, and had elected to be tried in the Circuit Court. At the first term of the Circuit Court the case was continued for the Commonwealth, and before the next sitting of the Circuit Court the above Act of the Assembly was passed. At the next succeeding term of the Circuit Court after the passage of the Act, the Circuit Court, of its own motion, dismissed the indictment in the absence of the prisoner and against the objection of his counsel, without prejudice to the Commonwealth to arrest, indict, and try him for the same offense. He was immediately arrested and confined in jail, and at the next term of the County Court was again indicted for the same offense. The court held that—

(1.) The order of dismissal by the Circuit Court did not operate as an acquittal, but if the Circuit Court had jurisdiction, the only effect of the order was to end that indictment. If the Circuit Court had no jurisdiction, it could enter no order which would benefit or prejudice the prisoner or the Commonwealth.

(2.) The prisoner was not twice in jeopardy for the same offense. He was not put upon his trial for said offense, and no jury was ever charged with his deliverance. In order to show former jeopardy it must appear that the party was put upon his trial before the Court which had jurisdiction, upon indictment or information which is sufficient in form and substance to sustain a conviction, and that a jury was empanelled and sworn, and thus charged with his deliverance.

(3.) The prisoner was not entitled under the facts in the case to be discharged either from imprisonment under section 4001 of the Code or from prosecution under section 4047 of the Code (as amended February 12, 1894; Acts of Assembly 1893-'4, page 464). In counting the terms of the County Court under section 4001 of the Code, only those terms are to be counted while the prisoner is held for trial without indictment in *that* court.

(4.) Where a court is deprived of jurisdiction over any class of cases by the repeal of a statute which gives jurisdiction, and there is no provision made for the transfer of such cases over which it has or is given jurisdiction, and no reservation is made for the trial of pending cases in such court, all such cases fall within the repealed statute.